

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

HEALTHIER CHOICE FLOORING,
LLC,

Plaintiff,

v.

CCA GLOBAL PARTNERS, INC.,
CARPET ONE, INC., DALTON
CARPET ONE FLOOR & HOME, and
ETOWAH CARPET ONE FLOOR &
HOME.

Defendants.

Civil Action No. 1:11-CV-02504-CAP

ANSWER TO COUNTERCLAIMS

COMES NOW Plaintiff Healthier Choice Flooring, LLC (“Healthier Choice” or “Plaintiff”), through counsel, and Answers the Counterclaims of Defendants CCA Global Partners, Inc. (“CCA”), D.C.O., Inc. (d/b/a Dalton Carpet One Floor & Home) and Etowah Decorating Center, Inc. (d/b/a Etowah Carpet One Floor & Home) as follows, and incorporates by reference the allegations of its Complaint and its responses to the individually numbered paragraphs of the Counterclaims into each of the following Affirmative Defenses. Numbered paragraphs herein refer to numbered paragraphs in the Counterclaims.

FIRST DEFENSE

The Counterclaim fails to state a claim against Plaintiff upon which relief can be granted.

SECOND DEFENSE

Defendants are equitably estopped and barred from asserting their Counterclaims.

THIRD DEFENSE

The relief requested in the Counterclaims is barred by the doctrine of waiver.

FOURTH DEFENSE

The relief requested in the Counterclaims is barred because Defendants operated in bad faith.

FIFTH DEFENSE

Defendants are barred from recovering against Plaintiff based on the doctrine of unclean hands.

SIXTH DEFENSE

Plaintiff expressly reserves its affirmative defenses as set forth above and the right to assert additional defenses as investigation and discovery progresses.

SEVENTH DEFENSE

Subject to the defenses raised herein, Plaintiff responds to the separately-numbered paragraphs of the Counterclaims as follows:

1. Plaintiff admits the allegations of Paragraph 1 of the Counterclaims.
2. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2 of the Counterclaims and therefore denies them.
3. Plaintiff admits the allegations of Paragraph 3 of the Counterclaims.
4. Plaintiff admits the allegations of Paragraph 4 of the Counterclaims.
5. Plaintiff admits the allegations of Paragraph 5 of the Counterclaims.

COUNT I – Declaratory Judgment of Non-Infringement

6. In response to Paragraph 6 of the Counterclaims, Plaintiff realleges and incorporates herein by reference its responses to the allegations of Paragraphs 1 through 5 of the Counterclaims as if fully set forth herein.
7. Plaintiff admits the allegations of Paragraph 7 of the Counterclaims.
8. Plaintiff denies the allegations of Paragraph 8 of the Counterclaims.
9. Plaintiff denies the allegations of Paragraph 9 of the Counterclaims.
10. Plaintiff denies the allegations of Paragraph 10 of the Counterclaims.
11. Plaintiff denies the allegations of Paragraph 11 of the Counterclaims.

12. Plaintiff denies the allegations of Paragraph 12 of the Counterclaims.

13. Plaintiff denies the allegations of Paragraph 13 of the Counterclaims.

COUNT II – Declaratory Judgment of No Dilution

14. In response to Paragraph 14 of the Counterclaims, Plaintiff realleges and incorporates herein by reference its responses to the allegations of Paragraphs 1 through 13 of the Counterclaims as if fully set forth herein.

15. Plaintiff denies the allegations of Paragraph 15 of the Counterclaims.

16. Plaintiff denies the allegations of Paragraph 16 of the Counterclaims.

17. Plaintiff denies the allegations of Paragraph 17 of the Counterclaims.

18. Plaintiff denies the allegations of Paragraph 18 of the Counterclaims.

19. Plaintiff denies the allegations of Paragraph 19 of the Counterclaims.

20. Plaintiff denies the allegations of the *ad damnum* clause and denies that Defendants/Defendants are entitled to any relief whatsoever.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Healthier Choice respectfully requests of this Court that:

(a) Judgment be entered in favor of Plaintiff and against Defendants on all counts of the Complaint;

- (b) Defendants' Counterclaims be dismissed with prejudice, with all costs of this action and attorneys' fees assessed against Defendants;
- (c) The Court grant such other and further relief as it may deem just and appropriate.

This 25th day of October, 2011.

KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP

By: /s/ Jeffrey J. Toney
Jeffrey J. Toney
Georgia Bar No. 714615
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*Attorneys for Plaintiff Healthier Choice
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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies, pursuant to L.R. 7.1, N.D. Ga., that the foregoing ANSWER TO COUNTERCLAIMS was prepared in accordance with L.R. 5.1, N.D. Ga. using Times New Roman font, 14 point.

/s/ Paul G. Williams

Paul G. Williams

Georgia Bar No. 764925

CERTIFICATE OF SERVICE

A copy of this document was filed with the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This 25th day of October, 2011.

/s/ Paul G. Williams
Paul G. Williams
Georgia Bar No. 764925